

1 THE STATE OF ARIZONA
2 CITIZENS CLEAN ELECTIONS COMMISSION
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9 REPORTER'S TRANSCRIPT OF PUBLIC HEARING
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15 Phoenix, Arizona
16 October 20, 2005
17 9:30 a.m.
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23 Reported By:
24 Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)
Miller Certified Reporting

1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION, convened at 9:30 a.m. on October
3 20, 2005, at the State of Arizona, Clean Elections
4 Commission, 1616 W. Adams, Conference Room, Phoenix,
5 Arizona, in the presence of the following Board Members:
6 Ms. Marcia Busching, Phoenix, Chairperson
7 Ms. Kathleen Detrick, Tucson
8 Ms. Tracey Bardorf, Scottsdale
9 Mr. Gary Scaramazzo, Page (Teleconference)
10 Ms. Emila Jolley, Yuma

11

12 OTHERS PRESENT:

13 Mr. Todd Lang, Executive Director
14 Ms. Colleen McGee, Fiscal Service Manager
15 Ms. Genevra Richardson, Campaign Finance
16 Manager
17 Ms. Autumn Southard, Voter Education Manager
18 Ms. Diana Varela, Assistant Attorney General
19 Ms. Jessica Funkhouser, Attorney
20 General's Office
21 Ms. Nancy Read, Secretary of State's Office
22 Ms. Barbara Lubin, Clean Elections Institute
23 Mr. Paul Peterson, OMA
24 Mr. Robbie Sherwood, Arizona Republic
25 Mr. Christian Palmer, Arizona Capitol Times

1 P R O C E E D I N G

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3 CHAIRPERSON BUSCHING: I will call this meeting
4 to order. This is the Citizens Clean Election
5 Commission at 1616 West Adams, Suite 110, Phoenix,
6 Arizona 85007. Today is Thursday, October 20th, 2005
7 and it's 9:30 a.m.

8 As an announcement, the Commission may vote to
9 go into executive session which will not be open to the
10 public, for any item listed on the agenda for obtaining
11 legal advice. All matters on the agenda may be
12 discussed, considered, and are subject to action by the
13 Commission.

14 I've already called the meeting to order. The
15 second item on the agenda is approval of the October
16 4th, 2005 Commission meeting minutes. And I should note
17 for the record that Commissioner Scaramazzo is appearing
18 by telephone and all the other Commissioners are
19 present.

20 So, turning to the minutes. We had received in
21 our packet a set of minutes and today in person there's
22 a revised set of minutes. And I know people have not
23 had a chance to see the revised set of minutes.

24 There was one correction that needed to be made
25 that was not caught the first time around, and that was

1 on Page 14, Line 33-2 I guess it is, it says, "how do ya
2 address that issue?" And it should be obviously "you,"
3 Y-O-U.

4 Are there any other additions or corrections to
5 the minutes of October 4th?

6 COMMISSIONER BARDORF: Madame Chair, I have
7 typographical things. Page 28 Line 24, I think the "do"
8 should be D-U-E. And on Page 30 Line 19 --

9 CHAIRPERSON BUSCHING: I'm sorry. On page --
10 this is a little confusing because there's page numbers
11 on the bottom and there's page numbers on the side too,
12 so.

13 COMMISSIONER BARDORF: I don't have any page
14 numbers on the bottom.

15 CHAIRPERSON BUSCHING: Oh, you're not looking
16 at the, you know --

17 COMMISSIONER BARDORF: Oh, that will change
18 things. Then I need some time to find where these are.

19 CHAIRPERSON BUSCHING: Actually, having now
20 looked at it, I think they translate here. The number
21 on the side translated to the numbers that are on the
22 prior version.

23 COMMISSIONER BARDORF: So then it would be Page
24 30, but it's Page 13 of the new ones, Line 19. I
25 believe it was, "You had prior to the hearing the checks

1 that these are based on."

2 Let's see. Sorry.

3 CHAIRPERSON BUSCHING: I'm a little bit
4 confused. What did you say that that should be?

5 COMMISSIONER BARDORF: I think the sentence is
6 missing a couple words. "You had prior to the hearing
7 the checks that these are based on."

8 CHAIRPERSON BUSCHING: Okay.

9 COMMISSIONER BARDORF: And then on Page 47 Line
10 19 the word is "constrained" not "restrained". And on
11 Page 58 Line 3, the word is "allude" not "elude".
12 Homonym trap. Page 72 Line 9, it's "manner" not
13 "matter". And I think that's all I have.

14 CHAIRPERSON BUSCHING: Okay. Any other
15 additions or corrections to the October 4th minutes?

16 If not, the Chair will entertain a
17 motion.

18 COMMISSIONER DETRICK: Madame Chair.

19 CHAIRPERSON BUSCHING: Commissioner Detrick.

20 COMMISSIONER DETRICK: I move we approve the
21 minutes of October 4th with the corrections that have
22 been made.

23 CHAIRPERSON BUSCHING: Is there a second?

24 COMMISSIONER BARDORF: Second.

25 CHAIRPERSON BUSCHING: It's been moved by

1 Commissioner Detrick and seconded by Commissioner
2 Bardorf that we approve the minutes of October 4th, 2005
3 with the corrections noted.

4 All in favors say "aye".

5 (Chorus of ayes.)

6 CHAIRPERSON BUSCHING: Opposed, nay?

7 Chair votes aye. Motion carries.

8 Item No. 3, Executive Director's report. Mr.
9 Lang.

10 MR. LANG: Thank you, Madame Chair. Good
11 morning Commissioners. You have my report in front of
12 you. I've continued to meet with members of the
13 legislature. They've been very receptive and I've
14 enjoyed those meetings a great deal even when they take
15 me to task. I found it very helpful and worthwhile. I
16 just want to let you know that I certainly appreciate
17 the opportunity to meet with them and they've given me
18 more meetings. I have many scheduled for the next
19 couple of weeks.

20 Just as a follow up, Paula Ortiz is out of the
21 office. She's had surgery. She's fine, but she will be
22 out for the rest of this week and probably all of next
23 week. And I can tell you, it's brutal not having her
24 here. We really miss her. She does a ton as you know.
25 And Colleen McGee is trying to wear -- how many hats are

1 you wearing Colleen? Are you here?

2 MS. MCGEE: Four.

3 MR. LANG: So Colleen McGee is doing her best
4 to do both her own job and Paula's job as well as the
5 other job openings we currently have. So, thank you
6 Colleen.

7 We have 25 candidates right now, and they're
8 all eager.

9 Voter registration. I won't go into
10 unnecessary detail of what's been going on. I will
11 update the debate sponsor applications. Autumn is now
12 telling me we now have four applications, which is good.
13 She did send out a little e-mail and it worked. So,
14 thank you for that, Autumn. And she did another
15 training last night which was quite eventful I hear.
16 But that's par for the course.

17 Our five-year review, Geneva is cranking on
18 that. She's burning the midnight oil and doing a great
19 job. She and I are going to be meeting with Dean Wright
20 again, our consultant. And that's quite a -- quite a
21 project, but Geneva is working on a number of rules
22 issues and has done a great job.

23 Staffing. The big news of course and I've told
24 you that Autumn Southard is leaving, despite my offer to
25 double her salary. She is leaving to take a job with

1 the Republican Congress of Pennsylvania State Senate.

2 So, congratulations, Autumn.

3 MS. SOUTHARD: Thank you.

4 MR. LANG: And she will really be missed. She
5 does a wonderful job and I hope everything works out to
6 replace her. I do question the wisdom, Ms. Bardorf and
7 I were talking about this, of leaving now when the
8 weather is finally getting nice.

9 MS. SOUTHARD: I know.

10 CHAIRPERSON BUSCHING: Or even leaving at all.

11 COMMISSIONER BARDORF: Put it on her review,
12 displays lack of judgment.

13 MR. LANG: Yeah, yeah, her final review.

14 Really.

15 As for the deputy director position, I've not
16 yet made a decision. I've completed the first round of
17 interviews. I will probably do a brief second round.
18 And there's lots of good folks and it's been a tougher
19 decision than I expected.

20 As for the administrative assistant position,
21 Paula and Colleen were working hard on that before she
22 got sick. That sort of slowed down a little because
23 Paula is out. But Colleen is continuing to process it.
24 And I think Colleen said they will interview 10
25 applicants out of 150 applications they received. So

1 that is also progressing.

2 In enforcement, you see the numbers there. So
3 really, that -- that's my report unless you have some
4 questions.

5 CHAIRPERSON BUSCHING: Do any members of the
6 Commission have any questions?

7 I have a couple. Under your -- or with your
8 meetings with members of the legislature, what, if
9 anything, do you expect to come of those?

10 MR. LANG: Well, I have no specific agenda
11 except to learn from them what their concerns are and
12 that sort of thing. Obviously, there have been
13 discussions about proposed changes and ideas. I know a
14 couple of legislators are considering some legislation.
15 So that's one possibility.

16 Another consideration is I may come up with
17 some rules for the commissioners to consider in the next
18 few months depending on the reaction of the legislature.

19 CHAIRPERSON BUSCHING: Okay. And with the
20 five-year rule review, will we need to take any action
21 on that?

22 MR. LANG: No.

23 CHAIRPERSON BUSCHING: Okay.

24 MR. LANG: I don't think so. I'm ready to be
25 corrected by counsel if that's not the case.

1 MS. VARELA: I don't know.

2 CHAIRPERSON BUSCHING: Okay.

3 MR. LANG: I don't think so, but we need to --

4 we can call a special meeting, but I don't anticipate

5 that being necessary.

6 CHAIRPERSON BUSCHING: Okay. Thank you.

7 COMMISSIONER JOLLEY: I have a question.

8 CHAIRPERSON BUSCHING: Yes, Commissioner

9 Jolley.

10 COMMISSIONER JOLLEY: On the five-year review,

11 when is the deadline date?

12 MR. LANG: October 31st.

13 CHAIRPERSON BUSCHING: Any other questions for

14 the Executive Director?

15 If not, we'll go on to Item No. 4, discussion

16 and possible action on authorization pursuant to

17 R2-20-211 of Executive Director to take depositions,

18 administer oaths, and issue subpoenas.

19 Mr. Lang.

20 MR. LANG: Thank you, Madame Chair,

21 commissioners. As you know, Rule 211 permits the

22 Commission to authorize the Executive Director or

23 Assistant Attorney General to issue subpoenas -- issue

24 subpoena duces tecum and document production, we can

25 also do depositions in the -- like under Part B. And to

1 do depositions actually under Part C of that rule.

2 Colleen Connor did on occasion use that rule to
3 find out more information and I'd be interested in doing
4 the same thing in order to facilitate investigations.

5 And, obviously, my preference is whenever possible for
6 Diana Varela, our Assistant Attorney General, to do
7 these things. She's our attorney. She's the expert.

8 But on occasion, it may be useful for me to be able to
9 do it as well to sort of supplement her efforts and
10 that's the foundation for the request.

11 CHAIRPERSON BUSCHING: Is there any member of
12 the public wishing to speak to this matter?

13 Okay. Any questions by members of the
14 Commission?

15 COMMISSIONER BARDORF: I guess my question is,
16 so are you asking us to sort of as a general matter
17 authorize you to invoke this as necessary, not for
18 anything specific at this time?

19 MR. LANG: I have no specific use at this time,
20 no.

21 CHAIRPERSON BUSCHING: Any other questions?

22 COMMISSIONER DETRICK: Madame Chair.

23 CHAIRPERSON BUSCHING: Commissioner Detrick.

24 COMMISSIONER DETRICK: I would move we
25 authorize the Executive Director to take depositions,

1 administer oaths, and issue subpoenas in accordance with
2 R2-20-211 as needed.

3 CHAIRPERSON BUSCHING: Okay. Is there a
4 second?

5 COMMISSIONER JOLLEY: I will second it.

6 CHAIRPERSON BUSCHING: It's been moved by
7 Commissioner Detrick and seconded by Commissioner Jolley
8 that we authorize the Executive Director to take
9 depositions, administer oaths, and issue subpoenas in
10 accordance with R2-20-211. Any further discussion?

11 If not, the Chair will call for the question,
12 all in favor say "aye".

13 (Chorus of ayes.)

14 CHAIRPERSON BUSCHING: Opposed, nay?

15 Chair votes aye. Motion carries.

16 Item No. 5, proposed Commission meeting dates
17 for January through June 2006.

18 Mr. Lang, anything you have to say on
19 this?

20 MR. LANG: If the Commissioners -- I mean the
21 Commissioners have the dates before them. They're
22 January 26, February 23rd, March 30th, April 27th, May
23 25th, and June 29th. These are all the last Thursday of
24 the month.

25 I did not check to make sure May 25th -- I

1 don't think that is not -- I'm getting a head shake, it
2 is not Memorial Day weekend, so we're good there.

3 CHAIRPERSON BUSCHING: Okay. Have people had
4 an opportunity to check their calendars with the
5 exception of Commissioner Detrick?

6 COMMISSIONER DETRICK: I have two of them.

7 CHAIRPERSON BUSCHING: True. The Chair will
8 entertain a motion.

9 COMMISSIONER BARDORF: I move that we approve
10 these 2006 Commission meeting dates.

11 CHAIRPERSON BUSCHING: Is there a second?

12 COMMISSIONER JOLLEY: I'll second it.

13 CHAIRPERSON BUSCHING: It's been moved by
14 Commissioner Bardorf and seconded by Commissioner Jolley
15 that we approve the proposed 2006 Commission meeting
16 dates for the first half of the year. All in favor say
17 "aye".

18 (Chorus of ayes.)

19 CHAIRPERSON BUSCHING: Opposed, nay?

20 Chair votes aye. Motion carries. Put
21 them on your calendars.

22 COMMISSIONER BARDORF: Madame Chair, I know
23 that we had had some talk in the past about having
24 additional dates as we get closer to the election or
25 into the election period. Perhaps you might want to

1 consider starting to get those on people's calendars.
2 You know, maybe you can go today and take a look and see
3 what's going to work for you and get some proposed dates
4 going since it's going to get hectic.

5 CHAIRPERSON BUSCHING: The only thing I would
6 say is that we will have a new commissioner, and so --

7 COMMISSIONER BARDORF: True.

8 CHAIRPERSON BUSCHING: So.

9 COMMISSIONER BARDORF: That's true.

10 CHAIRPERSON BUSCHING: I agree with you. We
11 definitely will need additional meeting dates, but I
12 don't know how soon we'll need them.

13 COMMISSIONER BARDORF: Okay.

14 CHAIRPERSON BUSCHING: All right. Item No. 6,
15 discussion and possible action on the following
16 enforcement matters.

17 First one, MUR 04-0043, Peggy Toomey Hammann,
18 probable cause recommendation. Ms. Richardson.

19 MS. RICHARDSON: Good morning, Commissioners.
20 Mr. Lemon is in North Carolina right now checking on the
21 damage of his house from the hurricane, so he asked me
22 to present these for you today.

23 The first one that we have is Peggy Toomey
24 Hammann, probable cause recommendation. Mr. Lemon
25 recommended the Commission find probable cause for

1 violating ARS 16-941(A)(4), the general elections
2 spending limit, and ARS 16-948(D), paying fines and
3 penalties with Clean Election funds and failing to
4 comply with Title 16, Chapter 6 of the act.

5 On your probable cause recommendation, you will
6 see that the Respondent wrote two checks that were
7 returned due to insufficient funds in her bank account.
8 One was to KJJJ on October 28th of 2004 for \$152. And
9 the other was written to herself on September 2nd of
10 2004 for reimbursement of mileage in the amount of \$50.
11 And this indicates that she overspent her general
12 election spending limit.

13 On October 12th of 2004, Respondent wrote a
14 check to the Secretary of State in the amount of \$50 for
15 a late filing fee, and this is a violation of 16-948(D)
16 where monies shall be used to pay fines or civil
17 penalties.

18 On November 1st of 2004, the Respondent
19 received matching funds in the amount of \$528.34.
20 Neither did she report receipt of the matching fund and
21 how the money was spent which is in violation of ARS
22 16-913 and Rule AAC R2-20-219.

23 Mr. Lemon recommends the Commission find
24 probable cause that there was a violation and assess a
25 civil penalty pursuant to ARS 16-942(A). He recommends

1 a penalty of \$2,020 for both of the insufficient funds
2 checks, which is 10 times the amount of the expenditure
3 that exceeded that limit. He recommends a penalty of
4 \$500 for the payment of the late filing payment which is
5 10 times the amount of the expenditure of \$50. Pursuant
6 to 16-942(B) and R2-20-222, Mr. Lemon recommends a
7 penalty of \$50 for knowing and willful violation of
8 reporting requirement for the matching funds.

9 In total, Mr. Lemon recommends \$17,520 in civil
10 penalties.

11 CHAIRPERSON BUSCHING: Okay. Thank you.

12 MS. RICHARDSON: And we might add too, we have
13 provided Ms. Hammann opportunities to respond and we
14 haven't received one response from her.

15 CHAIRPERSON BUSCHING: And Ms. Hammann was the
16 person that had questions -- there were issues raised
17 about her address as well?

18 MS. RICHARDSON: Yes, and we've referred that
19 matter -- because it's outside of our jurisdiction -- we
20 referred that matter to, I believe, the Attorney
21 General's Office or Secretary of State's Office.

22 CHAIRPERSON BUSCHING: Okay.

23 MS. RICHARDSON: That was part of the reason
24 for the recommendation I believe when it came before the
25 Commission for the first time.

1 CHAIRPERSON BUSCHING: Thank you. Any
2 questions of Ms. Richardson?

3 COMMISSIONER DETRICK: I have one question.
4 You say that you provided her an opportunity to respond
5 and she hasn't responded?

6 MS. RICHARDSON: Right.

7 COMMISSIONER DETRICK: Was that done verbally
8 or in writing?

9 MS. RICHARDSON: We follow the normal procedure
10 for our enforcement matters. We submit everything to
11 her in writing and offer her a certain amount of time to
12 respond to the complaint, the order, and probable cause
13 recommendation and go through these steps.

14 And also if the Commission remembers, we did an
15 audit for her reports and she was allowed time to
16 respond to those audits as well and we did not receive a
17 response from her. I spoke to the auditors and they
18 said they didn't receive a response from her either,
19 so --

20 CHAIRPERSON BUSCHING: Do we know that she's
21 receiving this information?

22 MS. RICHARDSON: We do. We require signatures
23 for all of the Fed Ex documents that we send to her
24 address. I've spoken to her over the phone to confirm
25 the address is correct and it seems to me she's

1 receiving those documents.

2 COMMISSIONER DETRICK: So, she hasn't indicated
3 at all why she is not responding?

4 MS. RICHARDSON: No, she has not.

5 CHAIRPERSON BUSCHING: Any other questions of
6 Mrs. Richardson?

7 Anyone from the public wishing to speak to this
8 matter?

9 CHAIRPERSON BUSCHING: Okay. Any discussion
10 and motion by the Commission?

11 COMMISSIONER DETRICK: Madame Chair.

12 CHAIRPERSON BUSCHING: Commissioner Detrick.

13 COMMISSIONER DETRICK: I can't understand why
14 someone would not at least respond and tell you why they
15 weren't responding or why they felt that the report was
16 in error. And I agree with Mr. Lemon's recommendation
17 that this appears to be a willful -- knowing and willful
18 violation.

19 So, therefore, I move that we find probable
20 cause exists to believe that the violation occurred and
21 that we accept the recommendation of the external
22 investigative consultant Mr. Lemon, and we assess
23 penalties in the amount of \$17,520.

24 CHAIRPERSON BUSCHING: Is there a second?

25 COMMISSIONER JOLLEY: I will second that.

1 CHAIRPERSON BUSCHING: It's been moved by
2 Commissioner Detrick and seconded by Commissioner Jolley
3 that we accept the recommendation of the external
4 investigative consultant and assess a civil penalty in
5 the amount of \$17,520. Further discussion?

6 If not. The Chair will call for the question,
7 all in favor say "aye".

8 (Chorus of ayes.)

9 CHAIRPERSON BUSCHING: Opposed, nay?

10 Chair votes aye. Motion carries.

11 MUR 04-0066, Cameron Udall, dismissal
12 recommendation. Ms. Richardson.

13 MS. RICHARDSON: Commissioners, this complaint
14 was filed by Patrick Meyers for failure to identify
15 expenditures to the campaign consultant on her campaign
16 finance report. If you remember, the Commission issued
17 a reason to believe recommendation to require compliance
18 at the last meeting. The Respondent received the
19 necessary documents from the vendor to itemize her
20 expenditures and filed an amended campaign finance
21 report which is attached. And Mr. Lemon recommends
22 dismissing this complaint and terminating this
23 proceeding.

24 CHAIRPERSON BUSCHING: Any questions of Ms.
25 Richardson?

1 Any members of the public wishing to speak to
2 this matter?

3 Okay. Any comments by the members of the
4 Commission?

5 None, the Chair will entertain a motion.

6 COMMISSIONER JOLLEY: Madame Chair.

7 CHAIRPERSON BUSCHING: Commissioner Jolley.

8 COMMISSIONER JOLLEY: Yes, in the matter of MUR
9 04-0066 in reference to Mr. Cameron Udall --

10 CHAIRPERSON BUSCHING: Ms.

11 COMMISSIONER JOLLEY: Ms. Excuse me. Ms.
12 Cameron Udall, excuse me.

13 -- that the matter be terminated according to
14 the external investigative consultant's report, Mr. Gene
15 Lemon.

16 COMMISSIONER SCARAMAZZO: I'll second that.

17 CHAIRPERSON BUSCHING: It's been moved by
18 Commissioner Jolley and seconded by Commissioner
19 Scaramazzo that the recommendation of the external
20 investigative consultant be adopted and that the
21 proceedings in MUR 04-0066 against Cameron Udall be
22 terminated. Any further discussion?

23 In not, the Chair will call for the question,
24 all in favor say "aye".

25 (Chorus of ayes.)

1 CHAIRPERSON BUSCHING: Opposed, nay?

2 The Chair votes aye. Motion carries.

3 Next item, Jim Torgeson, discussion and
4 possible approval of Pre-General and Post-General Final
5 Audit Reports.

6 MS. RICHARDSON: Commissioners, these just need
7 your approval. The auditors did receive documentation
8 from Mr. Torgeson. That was a concern in his
9 preliminary audit for backup documentation and receipts
10 for certain reimbursements. The auditor said they
11 received those documents and made the necessary changes
12 in the audit report.

13 Mr. Torgeson also edited his campaign finance
14 report. The campaign finance report indicated \$6,000
15 which is why we turned him over to audit. He amended
16 his report. It has a zero balance now.

17 I want to point out, the auditors had to use
18 the original campaign finance report to reconcile all
19 the expenditures and the final report. So the amended
20 report is not reflected in the final report.

21 CHAIRPERSON BUSCHING: And as a result of these
22 audit reports -- well, let me back up and ask, is this
23 the last audit to be done now?

24 MS. RICHARDSON: This is the last audit for
25 2004.

1 CHAIRPERSON BUSCHING: Yeah. Okay. Any other
2 questions of Ms. Richardson?

3 Any member of the public wishing to speak to
4 this matter?

5 Any discussions by members of the
6 Commission?

7 COMMISSIONER JOLLEY: Madame Chair.

8 CHAIRPERSON BUSCHING: Commissioner Jolley.

9 COMMISSIONER JOLLEY: So, we will be approving
10 what the auditor Miller Allen has submitted to us, but
11 then will we get a final report that shows all this is
12 corrected?

13 MS. RICHARDSON: This is reflected in the
14 report before you, so this needs to be -- this is the
15 final proposal. Once the Commission approves it, it
16 will be finalized and sent to Mr. Torgeson as final.

17 COMMISSIONER JOLLEY: Okay.

18 CHAIRPERSON BUSCHING: Okay. Any other
19 questions or comments?

20 If not, the Chair will entertain a
21 motion.

22 COMMISSIONER DETRICK: Madame Chair.

23 CHAIRPERSON BUSCHING: Commissioner Detrick.

24 COMMISSIONER DETRICK: I move we approve the
25 Pre-General and Post-General Final Audit reports for Jim

1 Torgeson.

2 CHAIRPERSON BUSCHING: Is there a second?

3 COMMISSIONER JOLLEY: I will second it.

4 CHAIRPERSON BUSCHING: It's been moved by

5 Commissioner Detrick and seconded by Commissioner Jolley

6 that we accept the Pre-General and Post-General Final

7 Audit reports for Jim Torgeson. Further discussion?

8 If not, the Chair will call for the question,

9 all in favor say "aye".

10 (Chorus of ayes.)

11 CHAIRPERSON BUSCHING: Opposed, nay?

12 Chair votes aye. Motion carries.

13 Item D, MUR 04-0020, David Gowan, discussion

14 and possible action on outcome of informal settlement

15 between Commission representative Tracey Bardorf and

16 David Gowan. Ms. Bardorf.

17 COMMISSIONER BARDORF: Unfortunately, Mr. Gowan

18 had a family emergency on the date we were scheduled to

19 have our settlement conference so we had to postpone.

20 And, obviously, with the agreement that he was

21 continuing to waive the deadline that's triggered by the

22 statute. And apparently he left a message or his

23 attorney left a message for Ms. Varela suggesting

24 November 4th. Is that right?

25 November 4th is the new date. The

1 Commissioners' meetings fall on November 3rd, and then
 2 the next meeting is actually after his scheduled hearing
 3 which is currently scheduled for November 17.

4 So, I believe -- are you free on November 4th?

5 MS. VARELA: Yeah.

6 COMMISSIONER BARDORF: And I am as well. If we
 7 do that, we would need to have some sort of meeting
 8 before November 17th so that in the event there is a
 9 settlement reached, we won't have to send him through
 10 the administrative process. It will be too late to
 11 settle it once that gets under way.

12 So, we need to either commit to making -- I
 13 guess, get another meeting on the calendar in there or
 14 we can see if we can find another date with him. He's
 15 in Sierra Vista -- or Tucson. He was going to be in
 16 Phoenix on the 4th, so that's where that date came from.

17 CHAIRPERSON BUSCHING: Okay. Anyone here from
 18 the public wishing to speak to the David Gowan matter?

19 Okay. Any discussion?

20 COMMISSIONER DETRICK: Madame Chair.

21 CHAIRPERSON BUSCHING: Commissioner Detrick.

22 COMMISSIONER DETRICK: If we have a special
 23 meeting, when would that have to be held after the
 24 conference with him on the 3rd [sic] -- how soon before
 25 the 17th?

1 MS. VARELA: It would have to -- it could be
2 held at any time. We're going to have to ask him to
3 waive -- I think the settlement conference has to happen
4 within 15 days of the administrative hearing, so we
5 would have to ask him to waive the 15 days anyway. And
6 they've indicated -- his attorney is indicating they're
7 willing to waive whatever they need to and the November
8 4th date is his proposed date.

9 So, I think the sooner, the better. If, as
10 commissioner Bardorf has indicated, if there's a
11 settlement, we would like to let everyone know they can
12 free up that time. If there's not a settlement,
13 everybody will need to prepare for the hearing.

14 CHAIRPERSON BUSCHING: My own personal
15 preference would be to figure out a way to have them
16 meet sooner. But, you know, I certainly defer to
17 whatever works for everyone.

18 COMMISSIONER DETRICK: Well, Madame Chair, I'm
19 going to have an increasingly difficult time doing a
20 special meeting, but obviously I will do whatever. You
21 know, I will be meeting by phone and probably carve out
22 time.

23 CHAIRPERSON BUSCHING: And if it's after
24 November 4th, I will as well, so --

25 COMMISSIONER BARDORF: So, should we then go

1 back to Mr. Smith who is his attorney and suggest an
 2 earlier date and then barring any earlier date
 3 available, go ahead with the 4th and we'll expect to
 4 have a meeting that's the least inconvenient? Okay.
 5 Then we'll do that.

6 CHAIRPERSON BUSCHING: Okay. So, there's no
 7 action that needs to be taken then today.

8 COMMISSIONER BARDORF: No.

9 CHAIRPERSON BUSCHING: Okay. All right then.
 10 Item E, MUR 04-0077, Jeff Dial, reason to believe
 11 recommendation.

12 MR. LANG: Madame Chair, Commissioners, Mr.
 13 Dial due to an error in procedure by Federal Express
 14 didn't receive the documents -- or we have no proof that
 15 he received the documents in a timely manner. So, we
 16 have given him until Monday, this coming Monday, to
 17 respond. So, this will be tabled until the next
 18 meeting.

19 CHAIRPERSON BUSCHING: Okay. All right. So
 20 there's no action required for that.

21 I'm down to Item 7, call for public comment.
 22 This is the time for consideration and discussion of
 23 comments and complaints from the public. Action taken
 24 as a result of public comment will be limited to
 25 directing staff to study the matter, or rescheduling the

1 matter for further consideration and decision at a later
2 date, or responding to criticism.

3 Are there any members of the public that wish
4 to speak?

5 I don't see any. In which case, we're at Item
6 No. 8, adjournment. May I have a motion?

7 COMMISSIONER BARDORF: Madame Chair, I move
8 that we adjourn this meeting.

9 CHAIRPERSON BUSCHING: Is there a second?

10 COMMISSIONER DETRICK: I second.

11 CHAIRPERSON BUSCHING: It's been moved by
12 Commissioner Bardorf and seconded by Commissioner
13 Detrick that we adjourn the meeting.

14 All in favor say "aye".

15 (Chorus of ayes.)

16 CHAIRPERSON BUSCHING: Opposed, nay?

17 The Chair votes aye. The motion carries.

18

19 (Whereupon the proceeding concludes at 10:05
20 a.m.)

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1 C E R T I F I C A T E.

2

3 I, Angela Furniss Miller, Certified Reporter,
4 do hereby certify that the foregoing pages numbered 1
5 through 27, inclusive, constitute a full and accurate
6 printed record of my stenographic notes taken at said
7 time and place, all done to the best of my skill and
8 ability.

9 DATED, at Phoenix, this 24th day of October,
10 2005.

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14 Angela Furniss Miller, RPR
 Certified Reporter (AZ50127)

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